

# **ARTICLE 21**

## **DEALING WITH UNACCEPTABLE PERFORMANCE**

### **1. Introduction:**

The Performance Management Program is set forth in FSH 6109.13 Chapter 10 and applicable provisions of this Master Agreement. Performance Management is an ongoing effort, not only an annual or semiannual appraisal. If at any time during the rating period, the rating official deems an employee's performance to be deficient in any element, standard, or measure, it is the rating official's responsibility to promptly communicate with the employee to identify and address the issue with the objective of preventing the need for adverse action. The rating official should review the current performance plan with the employee to ensure that it is accurate and that expectations have clearly been communicated to the employee. Rating officials may need to provide follow-up counseling and additional training to assist the employee. Rating officials should maintain examples of deficient performance and should document all counseling sessions. Also, see Article 16 Section 3 regarding notice requirements and opportunity to perform if a career-ladder promotion or see FSH 6109.13 Chapter 10 when within-grade increase is in jeopardy (nonadverse action).

If the deficient performance is related to misconduct that is having a negative effect on the employee's performance, rating officials shall consider appropriate action to correct the employee's conduct, in accordance with Article 22.

### **2. Opportunity periods:**

An opportunity period will normally be at least 60 days. The employee will be given the opportunity to work on those portions of the job that are unacceptable, but not to the exclusion of other work assignments. A longer period may be warranted depending on the nature of the employee's position

and the performance deficiency involved. The rating official will ensure that the employee receives adequate work time to improve the area that has been declared unacceptable. Normally within 14 days of the end of the opportunity period, the rating official will notify the employee in writing whether the employee's performance has improved to the fully successful level.

### **3. Performance Improvement Plans (PIP):**

If deficient performance is in a critical performance element, a PIP will be required. PIPs will be in writing.

- a. Contents of a PIP: While unique to the employee and the individual circumstances being addressed, the following information must be included in all PIPs (FSH 6109.13, Chapter 10, Section 18.2):
  - (1) Identifying Information: The employee's name, title, series, grade, and organizational location.
  - (2) Length of Opportunity Period to Improve Performance to the Fully Successful Level: The length of the initial opportunity period must be at least 60 calendar days. This period may be extended by written notice prior to the end of this opportunity period.
  - (3) Elements and Deficiencies: The critical element(s) and performance standard(s) for which the employee's performance is at the unacceptable performance level and a description of the exact nature of the deficiencies.
  - (4) Actions Required to Improve: Advice and/or guidance on what the employee must do to improve to the successful performance level. Expectations may be clarified at this time. However, additional duties or standards may not be added to the employee's performance plan during a PIP.
  - (5) Management Assistance: A statement describing how the rating official will assist the employee to correct the performance deficiencies. Assistance may include, but is not limited to, counseling, closer

supervision, special resources, training, more frequent performance reviews, memoranda written to the employee explaining ongoing errors and how to correct them, assistance with organizing workload, and samples of acceptable work products.

(6) Potential Consequences of Failure: A statement that failure to improve performance to the successful performance level in any critical element (that is, the level of performance required for retention in the position) may result in reassignment, a reduction in grade, or separation of the employee from the agency.

(7) Employee Assistance Referral: A referral to the Employee Assistance Program (EAP) (FSM 6143): However, an employee cannot be compelled to seek EAP assistance.

b. The rating official will meet with the employee regularly for the duration of the PIP to reevaluate performance and counsel the employee on how to improve. Union representation will be provided upon the employee's request. However, PIP meetings will not be postponed by more than 1 day to accommodate securing of a union representative. The Parties will use the most economical and efficient methods to conduct the PIP meeting, including use of current communication technologies whenever practical in accordance with Article 7. The role of the Union representative in a PIP meeting is limited in scope, and the representative will not be disruptive in the meeting.

c. Normally within 14 days of the end of the opportunity period described in the PIP, the rating official will notify the employee in writing whether the employee's performance has improved to the fully successful level in that critical element(s).

(1) When an employee's performance has improved to the fully successful level, the employee is retained in the position. The employee is responsible for maintaining performance at the fully successful level in the critical element for which the opportunity period was afforded for 1

year following the issuance of the PIP. If, during the 1-year period, the employee's performance again becomes unacceptable in the critical element for which the opportunity period was afforded, the employee may be reassigned, demoted to a lower grade, or removed without any additional opportunity to improve.

- (2) If the determination is that the employee's performance is unacceptable, and Management determines to propose an adverse action, Section 4 below applies.

#### **4. Adverse Action:**

Actions will be consistent with 5 USC Chapter 43, 5 CFR 432, FSH 6109.13 Chapter 10 and this Article.

- a. Notice of Proposed Adverse Action: An employee whose reduction-in-grade or removal is proposed is entitled to at least 30 days advance written notice that informs the employee of:
  - (1) The nature of the proposed action.
  - (2) The specific instances of unacceptable performance by the employee on which the proposed action is based.
  - (3) The critical elements of the employee's position involved in each instance of unacceptable performance.
  - (4) The timeframe for submitting a reply.
  - (5) The right to be represented by a National Federation of Federal Employees (NFFE) representative, an attorney, or other representative.
  - (6) The right to make an oral and/or written reply and to receive a written decision with appeal rights.
- b. Decision: After full consideration of the case, where warranted, Management may remove, demote, or reassign the employee. The

decision will be concurred with by an official who is in a higher level position than the official who proposed the action.

- (1) The decision letter to an employee stating that action under this article will be taken will inform the employee of the option to appeal the action to the Merit Systems Protection Board (MSPB) if applicable or through the negotiated grievance procedure, but not both, and will inform the employee that he or she will be deemed to have exercised his or her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedures. The decision letter shall include the time limits (number of days) to appeal under the negotiated grievance procedure and the MSPB appeals procedure.
- (2) The effective date of the action will be stayed at least 5 days from the date of the decision letter.
- (3) If the employee is the subject of an action based on unacceptable performance related to a disability, and the employee is eligible, files for disability retirement, and Management recommends approval, the Forest Service will delay the action to allow a determination to be made concerning the disability retirement. When an application for disability retirement of an employee is approved, the employee, at his or her option, may use any available sick leave.